

NTSB Order No. EA-3716

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 24th day of October, 1992

Respondent .

Docket SE-10989

5880

Sections 91.85(b), 91.105(c), and 91.9 of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 91, by operating civil aircraft N11478, a Waco Model QCF, in the Springfield, Missouri Airport Traffic Control Area without air traffic control authorization and by operating the aircraft under visual flight rules (VFR) in a control zone, when the ceiling was less than 1,000 feet.² The law judge, while concluding that the evidence established all of the allegations, reduced the sanction from the 30-day suspension ordered by the Administrator to 5 days.

Before turning to the Administrator's appeal, we must address a procedural matter. On September 7, 1990, the Administrator filed a timely notice of appeal of the law judge's initial decision. On September 10, 1990, respondent also filed a

²FAR §§ 91.85(b), 91.105(c), and 91.9 provided at the time of the incident in pertinent part as follows:

"§ 91.85 Operating on or in the vicinity of an airport; general rules....

(b) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area except for the purpose of landing at, or taking off from, an airport within that area. ATC authorizations may be given as individual approval of specific operations or may be contained in written agreements between airport users and the tower concerned.

§ 91.105 Basic VFR weather minimums....

(c) Except as provided in § 91.107, no person may operate an aircraft, under VFR, within a control zone beneath the ceiling when the ceiling is less than 1,000 feet.

§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

timely notice of appeal. On October 19, 1990, the Administrator perfected his appeal by timely filing an appeal brief. Respondent, however, did not file an appeal brief, but on November 13, 1990, he did timely file a reply to the Administrator's appeal brief in which he also argues that the law judge's factual findings are not supported by a preponderance of the evidence. Since the record does not disclose any justification or good cause for respondent's failure to meet the filing deadline, his appeal will be dismissed. See Section 821.48(a) of the Board's Rules of Practice, 49 CFR Part 821³; Administrator v. Hooper, NTSB Order No. EA-2781 (1988). Consistent with that dismissal, respondent's reply brief will be considered only to the extent it responds to issues raised on appeal by the Administrator.

The sole issue before the Board on the Administrator's appeal is whether the law judge provided clear and compelling reasons to justify his reduction in sanction from 30 days to 5 days. The law judge found that respondent made a "good faith" effort to avoid the control zone, but that, notwithstanding his

³Section 821.48(a) provides as follows:

"§821.48 Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after service of an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

efforts, he inadvertently flew through it because he was flying an aircraft without navigational equipment, in marginal weather, through an unfamiliar area, using only landmarks on the ground to navigate.

Thus, the law judge reasoned, a lengthy suspension is not warranted by the circumstances and is unnecessary as a rehabilitative measure, noting respondent's 30 years of experience as a pilot with Eastern Airlines and over 15,000 hours of flying time.

Board precedent is clear that where a law judge affirms all of the allegations, the Administrator's judgment concerning the length of suspension should be given great deference, absent a compelling reason. Administrator v. Muzquiz, 2 NTSB 1474 (1975); Administrator v. Pearson, 3 NTSB 3837 (1981). We agree with the Administrator that inadvertence, past experience, and an unblemished flying record are not clear and compelling reasons justifying a sanction reduction. See e.g., Administrator v. Moris and Emerson, 2 NTSB 2101 (1976). Nor is a 30-day suspension inconsistent with Board precedent in cases involving similar infractions. See e.g., Administrator v. Worth, NTSB Order No. EA-3595 (1992)(affirming a sanction of 45 days for violations of §§ 91.105(c) and 91.9).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is dismissed;
2. The Administrator's appeal is granted;
3. The Administrator's order and the initial decision, except as modified herein with regard to sanction, are affirmed; and
4. The 30-day suspension of respondent's airline transport pilot certificate shall commence 30 days after service of this opinion and order.⁴

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁴For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).